



NATIONAL ASSOCIATION OF THE DEAF

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Carriage of the Transmissions of
digital Television Broadcast Stations, Amendments to Part
76 of the Commission's Rules, CS Dkt. No. 98-120

Dear Ms. Salas:

Enclosed please find one original and four copies of Comments of the National Association of the Deaf in the above captioned docket.

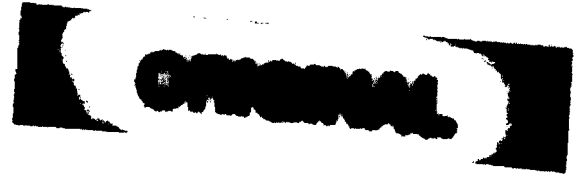
Sincerely,

Karen Peltz Strauss
Legal Counsel for Telecommunications Policy
National Association of the Deaf

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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of Digital Television Broadcast Stations)	
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Amendments to Part 76)	
of the Commission's Rules)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF THE DEAF**

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**COMMENTS OF
THE NATIONAL ASSOCIATION OF THE DEAF**

The National Association of the Deaf (NAD) submits these comments in response to the Federal Communication Commission's (FCC's or Commission's) Notice of Proposed Rulemaking (NOI) in the above captioned proceeding. The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration. The NAD has been an active participant in each of the FCC's various proceedings on closed captioning of video programming.

On August 22, 1997, the FCC released its final rules on television captioning, putting in place a detailed schedule for the implementation of captioning for video programming.¹ Those rules require that 75% of “pre-rule” non-exempt video programming be closed captioned by the year 2008.² The FCC defined “pre-rule” programming as 1) programming first published or exhibited prior to January 1, 1998, and 2) programming “first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission and exhibition prior to the date on which such television receivers must, by Commission rule, be equipped with built-in decoder circuitry designed to display closed-captioned digital television transmissions.”³

On October 15, 1997, the NAD and the Consumer Action Network (CAN) petitioned the Commission to reconsider several of its final captioning rules. In its petition, NAD/CAN sought clarification of the FCC’s rule on digital programming, to ensure that deaf and hard of hearing viewers would have ample opportunity to sample digital programming without barriers during the initial stages of its distribution. On October 2, 1998, the Commission released its Order on Reconsideration in response to the NAD/CAN petition.⁴ In that Order, the FCC explained that programming digitally distributed but displayed on analog receivers would not fall into this “pre-

¹ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, MM Dkt. No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997).

² The rules also required that 95% of new, non-exempt programming – i.e., programming first published or exhibited after January 1, 1998 – be closed captioned by the year 2006. In its recent Order on Reconsideration, the Commission increased this requirement to a full 100% of new, non-exempt programming. *In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Dkt. No. 95-176, Order on Reconsideration (1998).

³ 47 C.F.R. § 79.1(a)(6).

⁴ Order on Reconsideration, supra n.2.

rule” programming category. Rather, the Commission explained that its original rule defining certain digital programming as “pre-rule” only referred to such programming prepared for display on television receivers equipped for the display of digital transmissions *prior to the date on which the standards relating to the display of such programming on digital receivers are complete.*

The NAD understands that the FCC intends to initiate a rulemaking proceeding for the development of the above standards. We take the opportunity now, however, to note the critical importance of conducting this proceeding in the very immediate future. Congress and the FCC have recognized the importance of ensuring an easy transition to digital programming, with minimal disruption for consumers. At the same time, in the Television Decoder Circuitry Act, Congress directed the Commission to ensure that closed captioning services continue to be available as new video technology is developed.⁵ In that Act, Congress expressed its intent for deaf and hard of hearing viewers to have the same opportunities to sample digital programming during the initial stages of its distribution as would be available to the rest of the population.

The Commission’s NPRM specifically asks whether it should take action to encourage the production of cable-ready receivers to facilitate the introduction of digital broadcast television. NPRM ¶31. We urge that any such action should ensure that these receivers have the capability of receiving and displaying closed captioned digital transmissions *early on* in the transition to digital programming.

Similarly, the Commission seeks comment on the need for a mandate for set top boxes to process all types of digital broadcast television formats. NPRM ¶29. Where set top boxes will be used to pass through digital broadcast transmissions, a rule should be in place requiring that

⁵ 47 U.S.C. §330(b).

these boxes allow closed captions to pass through intact.

Finally, while we understand that the FCC's final captioning rules do require the display of captions on digital programming that is simulcast on receivers equipped to receive analog signals, we are concerned about a gap in the availability of closed captioning on programming distributed during this transition stage. Specifically, in its instant NPRM, the Commission notes that the cable industry and cable equipment manufacturers have opposed carrying both the analog and digital television broadcast stations during the transition period. NPRM ¶40. However, unless a cable operator's must carry obligations extend to both signals during this period, there remains the possibility that consumers will lose access to some closed captioned television programs during this interim period. This would be inconsistent with the intent of Congress to ensure the continued availability of free broadcast television service, local origination programming, and noncommercial, educational programming services,⁶ as well as the FCC's own mandate for video programming distributors to pass through captions intact.⁷ So long as there are no standards for the display of closed captions on digital receivers in place, access could be lost, especially if cable operators omit certain analog programming during this transition period. While not an immediate threat, the possibility of this occurring in the next few years points to the need for concerted efforts by the Commission to promptly develop a rule for television receivers to be equipped with

⁶ NPRM §5, citing 1992 Cable Act, § 2(a).

⁷ 47 C.F.R. § 79.1(c).

built-in decoder circuitry that can display closed captioned digital television transmissions.

Respectfully submitted

A handwritten signature in cursive script, reading "Karen Peltz Strauss".

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